

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6910 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

RAMA SAMAT GODHANIA

Appearance:

MR HARDIK C RAWAL for Petitioner
(MR DH WAGHELA) for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Learned advocate Mr. H.C.Raval is appearing for the petitioner Corporation. None is present for the respondent.

The facts of the present petition, in short, are that the respondent herein was working as driver in the petitioner corporation and during the course of his duty

on 19.12.84 while the respondent workman was on night duty at Bhesan and on 20.12.84 he was to come from Bhesan and thereafter to proceed to Junagadh Mahendhadra, the respondent has failed to attend the duties and therefore the petitioner Corporation has initiated departmental inquiry by issuing chargesheet against the workman for his remaining absent and after the end of the departmental inquiry, the respondent workman was dismissed from service by order dated 21.1.85 which was challenged by the workman before the Labour Court by filing Reference No.1222 of 1987. The Labour Court, Rajkot under its impugned award dated 30.3.1989 quashed and set aside the impugned order of dismissal and directed to reinstate the workman in service with continuity of service and backwages. The Labour Court has directed that one increment of the workman should be stopped without future effect. The said award passed by the Labour Court, Rajkot has been challenged by the petitioner Corporation before this Court by filing this petition.

Before the Labour Court, the respondent workman was examined at Exh.9 and no oral evidence was laid by the petitioner Corporation. The respondent has deposed before the Labour Court that he has put in seven years service in the petitioner corporation as a driver and that he has been rendered unemployed during the intervening period. Thereafter, the Labour Court has examined the Inquiry papers. The Labour Court found that on 20.12.84 the respondent was seriously ill and thereafter his mother died and therefore on account of his sickness of his mother he was unable to attend the duty for 2 days without permission of the authority. The Labour Court found that looking to the misconduct for remaining absent for two days, the punishment of dismissal is harsh and unjustified and therefore the same cannot be sustained. The Labour Court has considered the decision of this Court reported in 1987 LAB. IC Pg.685. In view of this consideration, the Labour Court directed the petitioner Corporation to reinstate the petitioner workman in service with full back wages for the intervening period and imposed punishment of stoppage of one annual increment ofcourse without future effect under its award dated 30.3.89.

I have heard Mr.Raval, Ld. Advocate for the petitioner Corporation. He has submitted that the Labour Court has committed error in granting in directing the petitioner Corporation to pay full back wages while reinstating the workman. He has submitted that the Labour Court has committed error in exercising the discretion.

Mr.Raval has made a statement before this Court that during the pendency of this petition, the workman has died. It is also a ground for not interfering with the finding of the Labour Court. In a decision reported in AIR 1994 SC Page.215 and 1999 SCC Lab & Service Pg.666, it has been held that punishment of dismissal for remaining absent for a very short period is prima facie disproportionate, harsh, arbitrary, unjustified and therefore, in both the cited decisions punishment of dismissal has been set aside by the Apex Court.

I am of the opinion that the case is covered by the decision of this Court reported in 1987 LAB IC Pg.685. In identical situation in the said decision for remaining absent for a period of two days, the punishment of dismissal was held to be harsh and unjustified and the workman was directed to be reinstated with full backwages. In the said decision, punishment of stoppage of two annual increments was imposed upon the workman without future effect.

This Court has observed in above cited case in 1987 Lab IC 685 as under:-

"4. Even though the Labour Court had come to the conclusion that dismissal from service is deprivation of bread and for such type of trivial misconduct, it was unreasonable and excessive, it imposed another excessive and unreasonable punishment. The Labour Court has rightly observed that the Corporation has not considered as to why lesser punishment should not be passed against the workman. However, the Labour Court itself fell into an error in not considering the alternative lesser punishment. There is a total non-application of mind on the part of the Labour Court in directing the respondent Corporation that refusal of 50% back-wages is sufficient punishment, without considering as to what that 50% would amount to. The monthly wages of the workman are about Rs.1600/- including dearness allowance and other allowances. He was dismissed from service on 15th Nov., 1980 and was actually reinstated on 15.4.1984. Thus he was out of service for more than 3 & 1/2 years. The total wages for this period would be running into a very large amount and even denial of 50% of the backwages would run into several thousands of rupees. The Labour Court has not at all applied its mind while observing that refusal of 50% back-wages is sufficient punishment. The Labour

Court does not appear to have realised as to what the substituted punishment would really amount to. For such a trivial misconduct of absence of two days the punishment should not have resulted into such a severe amount of fine of several thousands of rupees. The Labour Court has rightly observed that the Corporation has not considered as to what lesser punishment than dismissal should be given. The Labour Court also observed that the workman is an old servant of the Corporation and he should not be deprived of his bread for such an act of misconduct. However, the Labour Court has itself deprived the workman of his bread for a very long period and a very large amount disproportionate to the misconduct of the workman.

"5. In the case of Sardarsingh Devisingh V.

District Superintendent of Police, Sabarkantha District, 1985(2) 26 Guj LR 1368 this Court had considered the question of reasonableness and rationality of punishment in proportion to the misconduct. In para 6 of that judgement the learned Jdudge (Ahmadi, J) has observed as under:-

"When an authority is conferred with the power to inflict one of the several penalties such as caution or censure, reprimand, extra drill or duty, fine, stoppage of increments, reduction in rank, removal or dismissal, it is obvious that the authority must give a serious thought to the question of choice of penalty. The choice cannot be arbitrary but must depend on the nature of misconduct established in a given case. Just as a road roller cannot be brought to crush a fly, so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave. The consequences of removal or dismissal from service are severe, sometime the entire family is ruined because another job or work may not be easy to find and, therefore, it is all the more necessary that the punishment of removal/dismissal should be invoked sparingly and in cases which can be described as gross, such as, receiving or defalcation of public funds, behaviour which is morally reprehensible, gross

abuse or misuse of authority, etc. However, if a policeman remains absent without leave, it certainly has an adverse effect on disciplined force which can be remedied by imposing a lighter penalty such as withholding of increments or the like."

In the present case we find that the punishment of refusal of 50% back-wages which actually runs into several thousands of rupees is disproportionate to the misconduct of the workman, which is very minor and which could not have attracted any major penalty. No reasonable persons could have imposed a penalty or fine of several thousands of rupees or dismissal for remaining absent for two days and negligence. In the case of Jitendra Singh Rathor (1984 Lab IC 554) (supra) the Tribunal had directed reinstatement of the workman with half back wages and the employer had approached the High Court under Art. 227. The High Court vacated the order of reinstatement holding that the ends of justice would be served by directing payment of compensation quantified at Rs.15000/-. This modification of the High Court was assailed before the Supreme Court at the instance of the workman. In that case the Supreme Court observed that the workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. In the present case there is no particular reason shown to withhold 50% of the back wages which run into several thousands of rupees as punishment for a very minor misconduct. Such a minor misconduct could be punished only with a minor penalty like withholding of one or two increments without cumulative effect. The cumulative effect is also many a time not given proper consideration. Cumulative effect has the effect over the entire service career of the workman and there is permanent loss, and at the end of the service the cumulative loss would run into a very large figure and it would also affect the pensionary benefits. The punishment of stoppage of increments with cumulative effect is to be imposed after careful consideration and application of mind to be the resultant consequence.

"6. In view of the misconduct, here of

absence from duty for two days and negligence, the maximum penalty that could have been imposed by any reasonable employer could not have been more than stoppage of two increments without cumulative effect, especially in view of the fact that the past record of the workman was not bad and he had good service record of 9 years and also a long service to go.

"7. In view of the aforesaid discussion, we quash and set aside the award of the Labour Court in so far as the Labour Court has refused 50% back wages as sufficient punishment. We, therefore, hold that the workman is entitled to reinstatement with continuity of service with full back-wages, but he is required to be punished by imposing on him penalty of stoppage of two increments without cumulative effect."

Therefore, I am of the opinion that the view taken by the Labour Court does not require any interference while exercising extra ordinary powers under Article 226 and 227 of the Constitution of India. Therefore, this petition is dismissed. Rule is discharged. No Costs. Interim relief granted earlier shall stand vacated.

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